

Federal law provision

“A condominium association, cooperative association, or residential real estate management association may not adopt or enforce any policy, or enter into any agreement, that would restrict or prevent a member of the association from displaying the flag of the United States on residential property within the association with respect to which such member has a separate ownership interest or a right to exclusive possession or use.”

Restrictions :

Any reasonable restriction pertaining to the time, place, or manner of displaying the flag of the United States necessary to protect a substantial interest of the condominium association, cooperative association, or residential real estate management association. (emphasis added)

HB 1096

Unless expressly prohibited by the condominium instruments, no unit owners' association shall prohibit a unit owner from displaying the flag of (i) the United States, (ii) the Commonwealth, (iii) any active branch of the armed forces of the United States, or (iv) any military valor or service award of the United States.

B. The unit owners' association may restrict the display of such signs in the common elements. A unit owners' association may establish reasonable restrictions as to the size, place, duration, and manner of placement or display of such flag. (emphasis added)

What constitutes a “reasonable restriction?”

Initially, the condo association in my district prohibited residents from flying the flag at any time. After a complaint about this policy, the board amended the policy to allow flag display on these dates:

New Year's Day
Inauguration Day
Martin Luther King's Birthday
President's Day
Memorial Day
Flag Day
Independence Day
Armed Forces Day
Labor Day
Columbus Day
Election Day
Veterans Day

Relevant Supreme Court comments on “time, place, and manner” restrictions

In *United States v. O'Brien* (1968), the Court set forth the appropriate framework for reviewing a viewpoint-neutral regulation of this kind: "[A] government regulation is sufficiently justified if it is within the constitutional power of the Government; if it furthers an important or substantial governmental interest; if the governmental interest is unrelated to the suppression of free expression; and if the incidental restriction on alleged First Amendment freedoms is no greater than is essential to the furtherance of that interest." (*City Council v. Taxpayers for Vincent*)

A special respect for individual liberty in the home has long been part of our culture and our law. That principle has special resonance when the government seeks to constrain a person's ability to *speak* there. Most Americans would be understandably dismayed, given that tradition, to learn that it was illegal to display from their window an 8- by 11-inch sign expressing their political views. Whereas the government's need to mediate among various competing uses, including expressive ones, for public streets and facilities is constant and unavoidable, its need to regulate temperate speech from the home is surely much less pressing. (*City of Ladue v. Gileo*)